IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

DAVID JOSEPH GARZA,	§	
# 45011-380	§	
	§	
Movant,	§	
	§	14-CR-0827-XR-1
VS.	§	19-CV-0079-XR(RBF)
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UNITED STATES OF AMERICA,	8	
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Respondent.	8	
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ORDER

Before the Court is Movant, David Joseph Garza's ("Garza") *pro se* Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 ("Section 2255 Motion"), filed on January 25, 2019. (Dkt. No. 222). Also pending are the following *pro se* motions filed by Garza: Motion for Record for Appeal Purposes¹ (Dkt. No. 225); Motion for Evidentiary Hearing (Dkt. No. 226); and Motion to Grant § 2255 Motion (Dkt. No. 228). On February 6, 2019, this Court issued an order directing the Government to file its response to Garza's § 2255 Motion within sixty days. (Dkt. No. 224). The response, due on or before April 8, 2019, has not been filed.

In his motion requesting that his § 2255 Motion be granted (Dkt. No. 228), Garza argues that due to the Government's failure to respond, his § 2255 Motion should be granted. However, Garza was convicted of conspiracy to interfere with interstate commerce by robbery and sentenced to 151 months' imprisonment and three years of supervised release. (Dkt. No. 102). The Court will not grant his § 2255 Motion based solely on the Government's failure to respond. Accordingly, Garza's Motion to Grant his § 2255 Motion (Dkt. No. 228) on this basis is **DENIED.**

¹ Although Garza refers to records on appeal, he refers to his § 2255 Motion as a "§ 2255 Appeal". (Dkt. No. 225).

In his Motion to Request Records, Garza requests transcripts of his initial appearance, plea,

and sentencing hearings. (Dkt. No. 225). However, the transcripts of the underlying proceedings

are already part of the record. (Dkt. Nos. 207, 208, 209, 156 and 157). According, Garza's Motion

to Request Records is **DENIED AS MOOT**.

Finally, **IT IS ORDERED** that the Government file its response within ten (10) days from

the date of this Order. The Government should include a Motion Requesting Leave of Court to file

its late response and provide good cause for its failure to adhere to this Court's order.

Garza is advised that the Court will address the merits of his § 2255 Motion (Dkt. No. 222),

along with his Motion for Evidentiary Hearing (Dkt. No. 226), upon receipt of the Government's

response.

IT IS SO ORDERED.

SIGNED this 29th day of April, 2019.

XAVIER RODRIGUEZ

UNITED STATES DISTRICT JUDGE